

***THE HON'BLE SRI JUSTICE N.V. RAMANA**

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+WRIT PETITION NO.24386 OF 2000

%Dated 31.01.2006

#1 The Divisional Electrical Engineer (Operation, APSEB., Bhimavaram, West Godavari District and another.

..... PETITIONERS

VERSUS

\$ 1 T. Pallapa Rao, S/o Narasimhulu, Helper, APSEB, Mutyalammamet, Undrajavaram (Village), Tanuku, West Godavari District and another.

.....RESPONDENTS

! Counsel for Petitioners: Mr. Somineni Kishore.

^ Counsel for Respondent No.1: Mr. V. Venugopala Rao

Counsel for Respondent No.2: G.P. for Labour

< GIST:

> HEAD NOTE:

? Cases referred:

- 1. 1996(3) ALD 383 (DB)**
- 2. 1891 AC 173**
- 3. (2005) 7 SCC 338**
- 4. 1999(5) ALD 735**
- 5. (2003) 3 SCC 605**
- 6. (2003) 4 SCC 364**
- 7. 1998(1) ALD 616 = 1997(6) ALT 664 (FB)**
- 8. AIR 1963 SC 779**

9. 1994 (2) SCC 537
10. (1998) 4 SCC 315
11. (2002) 10 SCC 330

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THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 24386 of 2000

Order:

The award dated 26.10.1999, passed by the Presiding Officer, Labour Court, Guntur, in I.D. No. 49 of 1993, directing the petitioners to reinstate respondent No.1 into service, is challenged in this writ petition.

Respondent No.1 worked as Helper in the Office of petitioner No.1, namely Divisional Electrical Engineer, Operations, A.P.S.E.B., Bhimavaram, West Godavari District. On the ground that respondent No.1 collected illegal gratification of Rs. 950/- from one K.V. Narasimha Rao and cheated the consumer, petitioner No.1 appointed the Assistant Divisional Engineer, Operations, Bhimavaram, as Enquiry Officer to enquire into the allegations. The Enquiry Officer, having gone into the allegations, issued charge sheet to respondent No.1 on 27.11.1990. Denying the allegations made in the charge sheet, respondent No.1 submitted his explanation. Considering the explanation, the Enquiry Officer, fixed 14.05.1991 as the date of enquiry, and communicated the same to respondent No.1. Respondent No.1, admittedly, did not attend the enquiry, and ultimately, the Enquiry Officer concluded that the charges made against respondent No.1 are proved. Petitioner No.1 after receiving the report from the Enquiry Officer, issued notice to respondent No.1 to show cause as to why the punishment of stoppage of two annual increments with cumulative effect should be imposed. In response thereto, respondent No. 1 submitted his explanation on 23.09.1991.

Thereafter, petitioner No.1 issued revised show cause notice to respondent No.1 on 28.09.1991 to show cause as to why the punishment of dismissal from service should not be stopped. On the very same day, respondent No.1 submitted his explanation thereto. However, petitioner No.1 passed an order on 30.01.1992 dismissing respondent No.1 from service w.e.f. 31.01.1992, and regularizing his absence as leave on loss of pay. Aggrieved thereby, respondent No.1 filed appeal on 20.02.1992 before petitioner No.2, who also dismissed the same.

Assailing the order of dismissal, as passed by petitioner No.1, and as confirmed by petitioner No.2, respondent No.1 raised dispute in I.D. No. 49 of 1993

on the file of the Labour Court, Guntur, who though found that the respondent No.1 had taken illegal gratification, yet had passed an award directing the petitioners to reinstate respondent No.1 into service with continuity of service, but without back wages. It is this award, passed by the Labour Court, Guntur, that is challenged in this writ petition.

Heard the learned Standing Counsel for the petitioners-A.P.S.E.B. and the learned counsel for respondent No.1.

The learned Standing Counsel appearing for the petitioners submitted that the Labour Court having found that respondent No.1 had collected illegal gratification of Rs. 750/- from the complainant, and having held that the charge leveled against him stood proved, committed grave illegality in interfering with the punishment of dismissal from service imposed on respondent No.1 and directing the petitioners to reinstate respondent No.1 into service, more so without assigning any reasons and when Section 11-A of the Industrial Disputes Act, 1947 did not confer wide discretion on it to pass such an order. She thus prayed that the impugned award be set aside and the writ petition be allowed.

On the other hand, the learned counsel for respondent No.1 submitted that respondent No.1 could not appear before the Enquiry Officer on the day fixed by him for enquiry, for he fell seriously ill, but the Enquiry Officer without fixing another date for enquiry, has concluded the enquiry, and submitted his report stating that the charges held against him are proved, and basing on the said one-sided report, the order of dismissal was passed against respondent No.1, which is illegal and arbitrary. He submitted that the Labour Court, though found that the charges leveled against respondent No.1 are proved, having regard to the fact that the punishment of dismissal from service imposed against him is highly disproportionate, had rightly exercised its discretion under Section 11-A of the Industrial Disputes Act, 1947 and directed the petitioners to reinstate respondent No.1 into service, and no interference is called for therewith. In support of his argument, he placed reliance on the judgment of a Division Bench of this Court in **B. Balraj v. Management of Federal Sports**. He thus prayed that no interference is called for with the impugned award and prayed that the writ petition be dismissed.

The parameters and scope of judicial review of this Court under article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined

There is no doubt that Section 11-A of the Industrial Disputes Act, 1947 confers wide discretion upon the Labour Court/Industrial Tribunal, to reappraise the material available on record and substitute its own findings for that of the disciplinary

authority, and where it feels that the punishment awarded by the disciplinary authority is too harsh and not in proportion to the proved misconduct or is shocking to the conscience of the Court, can award lesser punishment.

Though the Labour Court enjoys such wide discretion, the law is well settled that the Labour Court cannot exercise such wide discretion arbitrarily or fancifully and it has to be exercised judiciously, in accordance with the Rules of reason and justice and law. In **Sharp v. Wakefield**, the meaning of “Discretion” was explained as “something is to be done in accordance with the Rules of reason and justice, not according to the private opinion... according to law and not humor. It is to be not arbitrary, vague and fanciful, but legal and regular. It may be exercised within the limits”.

In **V. Ramana v. A.P.S.R.T.C.**, the apex Court held that the Labour Court while interfering with the punishment imposed by the disciplinary authority, should exercise its discretion under Section 11-A of the Industrial Disputes Act, 1947 judiciously, and should interfere only when the administrator’s decision is illogical or suffered from procedural impropriety or was shocking to the conscience of the Court and that it was in defiance to the moral standards.

Though the Labour Court found that respondent No.1 had taken a sum of Rs.750/- from the complainant for doing official favour, and held that the charge leveled against him stood proved, it may be noticed whether the Labour Court having held so, was justified in exercising its wide discretion to reduce the punishment of dismissal from service imposed by the disciplinary authority on respondent No.1 to that of his reinstatement into service by denying the back wages on the ground that the punishment imposed is disproportionate to the proved misconduct.

No reason whatsoever is assigned by the Labour Court to demonstrate how the punishment of dismissal from service imposed by the disciplinary authority on respondent No.1 is disproportionate to the proved charge. It is not known what weighed with the Labour Court to come to the conclusion that the punishment of dismissal from service imposed by the disciplinary authority on respondent No.1, is disproportionate to the proved charge. In **Divisional Manager, APSRTC v. E. Raja Reddy**, a learned Judge of this Court thus:

The Labour Court/Tribunal does not enjoy any untrammelled power or jurisdiction to set aside the order of discharge or dismissal and direct reinstatement of the workman and award lesser punishment in lieu of discharge or dismissal. Such an award may be passed by the Labour Court/Tribunal only in case where it is satisfied that the order of discharge or dismissal was not justified. **In that process the Labour Court/Tribunal is bound to record that the order of discharge or dismissal is shockingly disproportionate to the established misconduct. Such conclusion can be arrived at by the Labour Court/Tribunal only after appraisal of the material on record.** Such jurisdiction and power to interfere with the order of the disciplinary authority is conferred upon the Labour Court/Tribunal to protect the workmen from the possible vindictive and arbitrary dismissal or discharge of workmen from the service on flimsy, trivial and imaginary grounds. **But the satisfaction of the Labour Court/Tribunal that the order of discharge or dismissal was not justified is challengeable on the ground that it was found on no evidence and also on the ground that no reasonable person would have arrived at such satisfaction on the basis of the material available on record. Therefore, the power under Section 11-A of the Act has to be exercised by the Labour Court/Tribunal strictly on the basis of the material on record. The wide**

discretion conferred upon the Labour Court/Tribunal is well structured by the provisions of Section 11-A of the Act itself.

(emphasis supplied)

In **Regional Manager, U.P.S.R.T.C. v. Hoti Lal**, the apex Court held that the Court must give reasons for holding the punishment to be not commensurate with the charges, that failure to give reasons amounts to denial of justice, and a mere statement that punishment is disproportionate would not suffice. In **Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar**, the apex Court held:

When a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that punishment is shockingly disproportionate would not meet the requirement of law. Reasons substitute subjectivity by objectivity. The emphasis on recorded reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The “inscrutable face of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.

From the above decisions, it is clear that the Courts/Tribunals/Labour Court upon appreciation of the evidence on record, are duty bound to record their satisfaction if they seek to interfere with the punishment imposed by the disciplinary authority on the ground that it is disproportionate to the proved misconduct, for right to reason is an indispensable part of a sound judicial system, else it would amount to denial of justice. In the instant case, as stated above, the Labour Court, leave alone recording its satisfaction, has not assigned even a single reason, to show how the order of dismissal from service imposed by the disciplinary authority on respondent No.1 is disproportionate to the proved misconduct.

In the case on hand, the misconduct alleged against respondent No.1 is that he had taken bribe. A Full Bench of this Court in **G.R. Reddy v. Presiding Officer**, which was concerned with the misconduct of misappropriation of public funds alleged against the delinquent, held what should be the appropriate punishment in the circumstances of each case, should always be left to the discretion of the disciplinary authority and that this Court exercising power of judicial review under Article 226 of the Constitution of India, in such matters, shall not act as an appellate authority. The Full Bench placing reliance on the judgments of the apex Court in **State of Orissa v. Sbidyagushan** and **State Bank of India v. Samarendra Kishore**, observed that:

From a conspectus of decided cases, the golden thread which is noticed throughout, is that this Court while exercising the power of judicial review under Article 226 of the Constitution cannot lightly interfere with the punishment imposed by the disciplinary authority, since the High Court does not sit as a Court of appeal over the decision of the authority holding domestic enquiry against a public servant. It is not open to the High Court to reappraise the evidence and to arrive at an independent conclusion on the evidence adduced in the case. However, the grey area where the High Court can

interfere is only where during the course of departmental proceedings, principles of natural justice were violated causing prejudice to the delinquent officer. The High Court may interfere with the punishment when the same is shockingly disproportionate to proved guilt or on misconduct no reasonable prudent man would award such a punishment which is so arbitrary and unreasonable attracting application of Article 14 and in such circumstances, the High Court may well be justified in treating such cases as amounting to discrimination calling for redressal under Article 14 of the Constitution of India. Even here, this Court while exercising the power of judicial review may not substitute the punishment which is reasonable according to its opinion, for the punishment awarded by the disciplinary authority to impose appropriate punishment in the circumstances of the case. Such power may be exercised by a Court of appeal and not by the High Court while exercising jurisdiction under Article 226 of the Constitution of India.

For all these reasons, we are of the opinion that in cases of misappropriation of public funds, whether the sums so misappropriated are small or large, deterrent punishment is always called for in the interest of administration and what should be the appropriate punishment in the circumstances of each case, should always be left to the discretion of the disciplinary authority and the High Court while exercising judicial review under Article 226 of the Constitution of India shall not interfere and substitute itself as a Court of appeal.

Abetment of and taking of illegal gratification for getting done or doing official favours is an offence under the provisions of the Prevention of Corruption Act, 1988, and having regard to the fact that respondent No.1, for doing official favour is said to have taken Rs.750/- from the complainant, which charge being serious in nature, stood proved in the enquiry, I am of the considered opinion that the Labour Court committed an error in interfering with the punishment of dismissal imposed on respondent No.1 by the disciplinary authority and directing the petitioners to reinstate respondent No.1 into service without backwages, and more so without recording its satisfaction as to how the punishment of dismissal from service is disproportionate to the proved misconduct of taking illegal gratification for doing official favour, a charge which reflects upon the moral turpitude of a person to hold a post in the government. In **Union Bank of India v. Vishwa Mohan**, the apex Court, having regard to the charges framed against the employee, namely taking bribe, failure to protect the interests of Bank, failure to perform duties with utmost devotion, diligence, integrity and honesty, acting in a manner unbecoming of a bank officer etc., which stood proved in the departmental enquiry, held that the charges were serious enough to justify dismissal from service. In **Regional Manager, RSRTC v. Ghanshyam v Sharma**, the apex Court held that the Labour Court having upheld the finding of the enquiry officer that the delinquent was guilty of misconduct, was not justified in directing his reinstatement into service with continuity of service but without backwages, as is done by the Labour Court in the present case. Given the serious nature of charge, which stood proved, by the enquiry officer as well as the Labour Court, I am of the considered opinion that the punishment of dismissal from service imposed by the disciplinary authority on respondent No.1, cannot be said to be disproportionate to the proved misconduct or shocking to the conscience of the Court, warranting interference by the Labour Court in exercise of its wide discretion under Section 11-A of the Industrial Disputes Act, and more so without recording its satisfaction therefor.

Though the counsel for respondent No.1 contends that as respondent No.1 fell ill, he could not appear for the enquiry on the appointed day, and in those circumstances, the enquiry officer concluded the enquiry, which resulted in the

disciplinary authority imposing the punishment of dismissal from service, and the Labour Court had rightly exercised its discretion, I am unable to accept the same for the reason that it is not as if the disciplinary authority has passed the order of dismissal from service directly. Before passing the order of dismissal, respondent No.1 was given notice to show cause as to why he should not be dismissed from service, to which he replied. This apart, it is not even his case that he was not provided any opportunity by the Labour Court. That not being his case, I am of the considered opinion that the Labour Court, having found that the misconduct alleged against respondent No.1 stood proved, committed a grave illegality in interfering with the punishment of dismissal from service imposed by the disciplinary authority on respondent No.1 and directing the petitioners to reinstate him into service without back wages.

For the foregoing reasons, the writ petition deserved to be allowed, and it is accordingly allowed and the impugned award of the Labour Court is set aside. No costs.

N.V. RAMANA, J.

Date: 31st January, 2006.

KSR